

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVID E. BOWERS,

Petitioner,

v.

Case No. 08-C-285

JOHN HUSZ,

Respondent.

ORDER

David Bowers filed this petition pursuant to 28 U.S.C. § 2254, asserting that his state confinement was imposed in violation of the Constitution. In a Rule 4 order, I directed the petitioner to file an amended petition in which he clarified the relief he seeks in this action and state whether he had exhausted any applicable state proceedings. It is now apparent that petitioner is challenging a recent revocation of his parole, and he asserts the revocation violates the Constitution under the Double Jeopardy clause. He further asserts, more generally, that the state has no power to revoke him anymore because the sentences for the underlying convictions have been fully served. As to exhaustion, he indicates that he has filed various actions in state court challenging his revocation.

Although the grounds for relief are now somewhat more clear, it is equally clear that the plaintiff has not exhausted his state remedies. He has filed an affidavit in which he states that he filed a mandamus action in state court, but that action was dismissed for failure of service. He has also appealed his earlier convictions. The federal exhaustion requirement found in 28 U.S.C.

§ 2254(b) is intended to allow the state courts to have a full opportunity to consider the constitutional claims made by a habeas petitioner. Petitioner's mandamus action was dismissed for failure of service, and there was no appeal or subsequent attempt to renew that litigation in state court. Thus, in no way did the petitioner allow the state courts an opportunity to consider the merits of his claims. Accordingly, the petition will be **DISMISSED** for failure to exhaust.

SO ORDERED this 8th day of May, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge